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No. 07-10374

IN THE
Supreme Court of the United States

KEITH HAYWOOD,

Petitioner,

v.

CURTIS DROWN *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

New York Correction Law § 24 provides that New York State courts lack jurisdiction over *all* private damages claims against correction employees in their personal capacity for acts or omissions within the scope of employment and in the discharge of their duties, whether arising under state or federal law, and substitutes a state court damages remedy directly against the State in the New York State Court of Claims. The question presented is whether that statute violates the Supremacy Clause of the United States Constitution, art. VI, cl. 2, insofar as it applies to damages claims under 42 U.S.C. § 1983.

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STATEMENT OF THE CASE

A. New York State Court Jurisdiction Over Claims Arising From The Conduct Of Correction Officers And Employees

1. New York Correction Law § 24 and Its Predecessor

For over 60 years, New York State has assigned to its Court of Claims rather than its Supreme Court, New York's trial court of general jurisdiction, damages claims arising from the conduct of certain correction officers and employees in the discharge of their official duties.[1] In 1947, the New York Legislature provided that "[n]o civil action shall be brought in any court against [specified officers and employees of the corrections department] for alleged damages because of any act done or failure to perform any act, while discharging his official duties" and that "[a]ny just claim for damages against [such officers and employees] for which the state would be legally or equitably liable, shall be brought and maintained in the court of claims as a claim against the state." 1947 N.Y. Laws 367 (codified as (former) Correction Law § 6-b). To assure that claims proceeding in Supreme Court covered only those damages actions in which the correction employee's act was so clearly outside the scope of employment that it did not qualify as an act "for which the state would be legally or equitably liable," the statute also provided that a damages action against a covered employee could proceed in Supreme Court only with "leave of judge of

1. The New York State Department of Correctional Services employs both correction officers and civilian employees. The phrase "correction employee" hereinafter refers to both.

a supreme court, first had and obtained." *Id.*[2] The statute initially covered only "an officer or employee of a state institution for criminally insane or mentally defective persons in the [corrections] department," along with the commissioner and deputy commissioner of correction. The law was subsequently extended to damages actions against officers or employees of any state "prison or reformatory," 1962 N.Y. Laws 435, and then to damages actions against officers and employees in any institution in the corrections department. 1970 N.Y. Laws 475, 476 (renumbering the provision as Correction Law § 24).

In 1972, the Legislature revised and restated the statute pursuant to a recommendation of a select state committee. *See* Select Committee on Correctional Institutions and Programs, Report No. 2, at 23 (March 15, 1972). In addition to re-enacting the principles of the former provision, *see supra,* at n.1, the 1972 legislation also authorized the State to defend and indemnify correction officers and employees for damages

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2. That "leave of court" was intended to be granted only in such circumstances is confirmed by the fact that when the Legislature re-enacted the law in its current form in 1972, it replaced the "leave of court" requirement with language making explicit that the statute covers only damages actions "arising out of [acts or omissions] within the scope of the employment" of the correction employee. 1972 N.Y. Laws 283 (codified as Correction Law § 24 and reproduced infra, at 3). The 1972 law was described by the select state committee that recommended it as a "re-enactment of principles set forth in [the former provision]." Select Committee on Correctional Institutions and Programs, Report No. 2, at 23 (March 15, 1972).

actions in federal court. *Id.*[3] The language enacted in 1972 remains in force today, establishing a jurisdictional bar in New York courts to private damages claims against correction employees in their personal capacities for acts or omissions within the scope of employment and in the discharge of their duties:

> **Civil actions against department personnel**
>
> 1. No civil action shall be brought in any court of the state, except by the attorney general on behalf of the state, against any officer or employee of the department, in his personal capacity, for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties by such officer or employee.
>
> 2. Any claim for damages arising out of any act done or the failure to perform any act within the scope of the employment and in the discharge of the duties of any officer or employee of the department shall be brought and maintained in the court of claims as a claim against the state.

1972 N.Y. Laws 283.[4]

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3. In 1978, the Legislature replaced those department-specific defense and indemnification provisions with uniform provisions for the State's defense and indemnification of all state employees. 1978 N.Y. Laws 466 (codified at New York Public Officers Law § 17).

4. In 1977, when the Legislature removed parole operations from the Department of Correctional Services and established

(Cont'd)

2. The New York State Court of Claims

The New York State Court of Claims is a court of limited jurisdiction that hears damages claims against New York State as provided by the New York Legislature. N.Y. Const. art. VI, § 9; N.Y. Court of Claims Act § 9. The State has waived its sovereign immunity from liability for actions brought in compliance with the requirements of the Court of Claims Act. N.Y. Court of Claims Act § 8. These requirements include the filing of a timely notice of claim or notice of intention to file a claim, *id.* § 10, as well as compliance with certain pleading standards, *id.* § 11. The State's waiver of immunity does not include liability for punitive damages. *Sharapata v. Town of Islip*, 56 N.Y.2d 332, 437 N.E.2d 1104 (1982). Claims are determined by bench trial, New York Court of Claims Act § 12, and an attorney's fee award is authorized only in certain circumstances, *id.* § 27. The Court of Claims lacks jurisdiction to grant strictly equitable relief. *Psaty v. Duryea*, 306 N.Y. 413, 118 N.E.2d 584 (1954). The court's jurisdiction includes constitutional tort claims implied for violations of the New York State Constitution. *Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129 (1996). While the *Brown* Court did not

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(Cont'd)

a separate Division of Parole, it also enacted an identical jurisdictional provision for claims against employees of the Division of Parole. 1977 N.Y. Laws 904 (codified at N.Y. Executive Law § 259-q). Likewise, when the Legislature established the New York Office of Alcoholism and Substance Abuse in 1977, it enacted an identical provision covering employees charged with the duty of securing a person in need of treatment for alcoholism. 1977 N.Y. Laws 978 (codified at N.Y. Mental Hygiene Law § 19.14).

address the court's jurisdiction over analogous claims implied for violations of the federal Constitution, nothing in *Brown* precludes applying a similar analysis to such claims.

B. Proceedings Below

1. Plaintiff's Complaints

Plaintiff is a prisoner in New York's Attica Correctional Facility, serving a sentence of 15 to 30 years as a second violent felony offender for his 1990 conviction of one count of escape and eight counts of robbery. This case arises from two actions filed by him in New York State Supreme Court, Wyoming County, against several correction employees for damages in connection with three prisoner disciplinary proceedings and an alleged altercation. J.A. 5-22.

In the first action, plaintiff sues a hearing officer who found him guilty of improper mail solicitation after a disciplinary hearing. J.A. 16-22. Plaintiff alleges that the hearing officer was biased, that he based the determination on insufficient evidence and that he imposed a penalty intended to censor plaintiff in violation of his First Amendment rights. J.A. 20. Plaintiff seeks damages under 42 U.S.C. § 1983 to redress these alleged violations of his rights. J.A. 21.

In the second action, plaintiff sues five correction employees in connection with two disciplinary determinations rendered against him, one finding him guilty of assaulting a correction officer, and the other finding him guilty of drug use. J.A. 5-15. Regarding the assault, plaintiff alleges that several correction officers

fabricated a misbehavior report after one of them grabbed him without justification and caused a "minor injury to his left pinkie finger." J.A. 8, 11. Regarding the drug offense, plaintiff claims that the officers tampered with his urinalysis test. J.A. 11. Plaintiff seeks damages under both 42 U.S.C. § 1983 and state law for these actions. J.A. 11-14.

Defendants in both cases moved to dismiss the complaints on the ground that the New York Supreme Court -– the state trial court of general jurisdiction — lacked jurisdiction over plaintiff's claims, state and federal, under New York Correction Law § 24. Supreme Court agreed and dismissed the complaints on this basis. J.A. 34-37. The New York Appellate Division, Fourth Department, affirmed, rejecting plaintiff's contention that section 24 violates the Supremacy Clause insofar as it deprives New York Supreme Court of subject matter jurisdiction over his damages claims under 42 U.S.C. § 1983. J.A. 42-44.

2. The New York Court of Appeals' Decision

The New York Court of Appeals affirmed the dismissal of the complaints. It held that Correction Law § 24 does not violate the Supremacy Clause by barring state court jurisdiction over all damages claims against correction employees in their personal capacities arising from acts within the scope of employment, whether brought under state or federal law. J.A. 55-83.

The Court of Appeals stressed that states have broad sovereign authority to establish the structure and jurisdiction of their courts. J.A. 61. The court held that

section 24 governs the subject matter jurisdiction of New York's courts, rejecting plaintiff's argument that the statute confers an immunity. J.A. 63-64, 66-67. The court explained that "[t]he statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims — state and federal — for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment." J.A. 63.

In section 24, the court stated, "the New York Legislature has recognized that the State of New York is, in effect, the real party in interest when there is a challenge to a correction officer's alleged conduct arising from the discharge of official duties" and thus it reasonably provided a damages remedy directly against the State in the Court of Claims. J.A. 65.

> By restricting the forum for a certain type of claim to a particular state court, the Legislature did nothing more than exercise its prerogative to establish the subject matter jurisdiction of state courts in a manner consistent with New York's conditional waiver of sovereign immunity, which does not allow civil rights claims to proceed against the state in Supreme Court.

J.A. 65-66.

The Court of Appeals explained that the Supremacy Clause does not invalidate a state's limitation on the jurisdiction of its own courts that "does not discriminate

against federal claims in favor of analogous state claims." J.A. 62. Thus, "if a state court opens its doors to a state cause of action, it must also allow related federal claims to be heard . . . . But if a state does not extend jurisdiction to its courts to litigate a certain type of claim, it may deprive those courts of jurisdiction over a related federal claim." J.A. 62-63. The court stressed that section 24 "applies with equal force to all state and federal claims based on the identity of the defendant and the alleged conduct at issue." J.A. 64. Thus, "because Correction Law § 24 does not treat section 1983 claims differently than it treats related state law causes of action, the Supremacy Clause is not offended." J.A. 64.

To be sure, the result is to make a section 1983 claim for torts committed by correction employees unavailable in state court, but this is due not to any discrimination against those claims by the New York Legislature, but rather to the decision of Congress not to authorize suits against a state under section 1983. J.A. 66. Thus, the unavailability of a section 1983 claim in the New York Court of Claims presents no Supremacy Clause violation.

The Court of Appeals concluded that "[i]n the end, New York does not discriminate against section 1983 actions in favor of analogous state law claims because Correction Law § 24 removes subject matter jurisdiction over any cause of action — state or federal — for money damages in state Supreme Court for conduct by [correction] employees" within the scope of employment. J.A. 66-67. Under these circumstances, the court held, the Supremacy Clause has not been violated.

SUMMARY OF THE ARGUMENT

New York State Correction Law § 24 constitutes a valid exercise of New York's broad sovereign authority to establish the structure and subject matter jurisdiction of its own courts. An essential attribute of sovereignty retained by the States is the authority to establish state courts and allocate judicial business among them in the furtherance of state policies. Congress has no power to dictate the jurisdiction of state courts.

Correction Law § 24 regulates the subject matter jurisdiction of New York's courts in a manner that furthers New York's legitimate interests in sound judicial and prison administration. In New York, damages claims arising from the performance by correction employees of their official duties are numerous, and many of them are meritless and vexatious. Moreover, they are in effect suits against the State, because under state indemnification law, the State will ultimately pay any judgment. By requiring these suits to be brought directly against the State in the New York Court of Claims, the statute promotes efficient judicial administration in two respects. First, it relieves a drain on the finite resources of New York's busy Supreme Court, and diverts this litigation to the New York court with the exclusive function and special expertise in adjudicating damages claims against the State arising from the official conduct of state employees. Second, by removing the correction employee as the defendant, the statute minimizes the disruptive effect of these claims on the employees who

operate correctional institutions, while preserving the availability of damages to litigants with meritorious claims.

The Supremacy Clause does not necessarily require a state to maintain a court competent to hear a federal claim. In prior decisions, this Court has struck a careful balance between the supremacy of federal law and the States' sovereign autonomy to control the jurisdiction of their own courts. Where a state endows a court with jurisdiction to entertain certain state law claims, the court cannot refuse to hear analogous federal claims on policy grounds. Congress's enactment of a federal right of action, however, does not override state jurisdictional provisions that do not discriminate against federal claims. This Court has never held that in structuring the jurisdiction of its own courts, a state must discriminate *in favor* of federal claims.

Correction Law § 24 passes muster under the Supremacy Clause because it dictates the subject matter jurisdiction of New York courts in a manner that does not discriminate against section 1983 or other federal claims. Under section 24, New York courts lack jurisdiction to hear *any* damages claims — whether arising under state or federal law — against correction employees personally for acts or omissions in the scope of employment. The statute does not single out section 1983 or other federal claims and reflects no hostility to section 1983 claims because of their federal source. The provision respects the primacy of federal law by preserving the right to obtain injunctive relief in New York Supreme Court against correction employees to correct ongoing violations of federal law. It also

reserves jurisdiction in that court over damages actions against correction employees in their personal capacities for acts that are outside the scope of employment, the cases in which punitive damages are most likely to be appropriate.

Moreover, in section 1983, Congress did not even purport to override the States' historic sovereign authority to structure the jurisdiction of their own courts, and the history of the statute's enactment belies any such intent. This Court should not presume that Congress intended to intrude on New York's core sovereign authority to regulate the jurisdiction of its courts, and Correction Law § 24 should therefore be upheld.

ARGUMENT

I. CORRECTION LAW § 24 REPRESENTS A CONSTITUTIONAL EXERCISE OF NEW YORK STATE'S CORE SOVEREIGN AUTHORITY TO ESTABLISH THE STRUCTURE AND JURISDICTION OF ITS COURTS

When preemption of a state court jurisdictional statute is at issue, this Court "respect[s] the 'principles [that] are fundamental to a system of federalism in which the state courts share responsibility for the application and enforcement of federal law.'" *Johnson v. Fankell*, 520 U.S. 911, 922 (1997) (quoting *Howlett v. Rose*, 496 U.S. 356, 372-73 (1990)). This respect "is at its apex when [the Court] confront[s] a claim that federal law requires a State to undertake something as fundamental as restructuring the operation of its courts." *Id.* These

principles afford the States "great latitude to establish the structure and jurisdiction of their own courts." *Howlett*, 496 U.S. at 372.

A. An Essential Attribute Of State Sovereignty Is The Authority To Establish And Regulate The Jurisdiction Of State Courts.

In our federal Constitution, "[t]he Framers split the atom of sovereignty." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). The federal system established by the Constitution reserves to the States "a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." *Alden v. Maine*, 527 U.S. 706, 714 (1999). Thus, "[t]he States 'form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.'" *Id.* (quoting The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison)). The constitutional role of the States as sovereign entities is confirmed by the Tenth Amendment, providing that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X; *see Alden*, 527 U.S. at 713-14. Fundamentally, "[a] State is entitled to order the processes of its own governance." *Id.* at 752; *see also Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (federalist structure of joint sovereigns "allows for more innovation and experimentation in government").

Congress's enumerated powers do not authorize it to determine state court jurisdiction in the first instance or to expand that jurisdiction beyond that conferred by state law. As long ago as *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820), it was "perfectly clear, that Congress cannot confer jurisdiction upon any Courts, but such as exist under the constitution and laws of the United States, although the State Courts may exercise jurisdiction on cases authorized by the laws of the State, and not prohibited by the exclusive jurisdiction of the federal Courts." *Id.* at 27-28; *see also Claflin v. Houseman*, 93 U.S. 130, 141 (1867) ("[n]ot that Congress could confer jurisdiction upon the State courts"); *Brown v. Gerdes*, 321 U.S. 178, 188 (1944) (Frankfurter, J., concurring) ("Neither Congress nor the British Parliament nor the Vermont Legislature has power to confer jurisdiction upon the New York courts.").[5] A law by which Congress purported to define the jurisdiction of state courts would not be a "Law[] of the

5. As Justice Story explained, "Congress may, indeed, permit the state courts to exercise a concurrent jurisdiction in many cases; but those courts then derive no authority from congress over the subject-matter, but are simply left to the exercise of such jurisdiction, as is conferred on them by the state constitution and laws." 3 J. Story, Commentaries on the Constitution of the United States § 1749 (1833); *see also* 2 J. Kent, Commentaries on American Law 403 (12th ed. 1896) ("The doctrine seems to be admitted, that Congress cannot compel a state court to entertain jurisdiction in any case. It only permits state courts which are competent for the purpose, and have an inherent jurisdiction adequate to the case, to entertain suits in the given cases; and they do not become inferior courts in the sense of the Constitution, because they are not ordained by Congress. The state courts are left to infer their own duty from their own state authority and organization.")

United States which shall be made in Pursuance [of the Constitution]" within the meaning of the Supremacy Clause. *See Alden*, 527 U.S. at 731 ("As is evident from its text . . . , the Supremacy Clause enshrines as 'the supreme Law of the Land' only those federal Acts that accord with the constitutional design.").

Thus, an essential attribute of sovereignty reserved to the States is the authority to establish the structure and jurisdiction of their own courts. *See Atlantic Coast Line RR. Co. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 285 (1970) ("One of the reserved powers was the maintenance of state judicial systems for the decision of legal controversies."). "Mr. Chief Justice Jay described sovereignty as the 'right to govern,'" a right that "would necessarily encompass the right to determine what suits may be brought in the sovereign's own courts." *Nevada v. Hall*, 440 U.S. 410, 415 (1979) (quoting *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 472 (1793)); *see also Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981) ("Federal law confers rights binding on state courts, the subject-matter jurisdiction of which is governed in the first instance by state laws."). Accordingly, this Court has "made it quite clear that it is a matter for each State to decide how to structure its judicial system." *Johnson*, 520 U.S. at 922 n.13.

B. Correction Law § 24 Regulates The Jurisdiction Of New York's Courts To Further New York's Interests In Sound Judicial Administration.

The purpose and effect of Correction Law § 24 is to divert damages actions arising from conduct by correction employees from New York's trial court of general jurisdiction to its Court of Claims. The statute is an unambiguous exercise of authority by the New York Legislature to determine which courts should hear which cases. Under the New York Constitution, the Supreme Court is New York's court of general original jurisdiction, N.Y. Const. art. VI, § 7, but the New York Legislature has the power to "alter and regulate" that jurisdiction, N.Y. Const. art. VI, § 30, and specifically to assign to the Court of Claims jurisdiction over claims against or by the State. N.Y. Const. art. VI, § 9. Thus, the Legislature "may award jurisdiction to other tribunals, change or abolish common-law causes of action or substitute new remedies." *Motor Vehicle Mfrs. Ass'n v. State of New York*, 75 N.Y.2d 175, 184, 550 N.E.2d 919, 923 (1990).

Pursuant to this authority, the New York Legislature enacted Correction Law § 24 to regulate the jurisdiction of New York's Supreme Court, by diverting from that court to the Court of Claims damages claims arising from the acts or omissions of correction employees within the scope of their employment. As the Court of Appeals observed, section 24 regulates subject matter jurisdiction and does not purport to grant an immunity. J.A. 66-67.

> The statute, by emphasizing that '[n]o civil action shall be brought in any court of the state,' creates a neutral jurisdictional barrier to all claims — state and federal — for monetary damages in a state court against any correction officer in his or her personal capacity for actions within the scope of employment.

J.A. 63. This interpretation of the statute by New York's highest court is entitled to deference. *See Johnson*, 520 U.S. at 916 ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the state.").[6] Moreover, the state court's view of the statute as jurisdictional is correct. By its terms, as plaintiff acknowledges (Br. 21), the statute requires every New York court to dismiss a covered damages action against a correction employee for lack of jurisdiction, before even considering any immunity that might be available. This limitation on subject matter jurisdiction, unlike an immunity defense, can be invoked by the court *sua sponte* and cannot be waived. *See Matter of Fry v. Village of Tarrytown*, 89 N.Y.2d 714, 718, 680 N.E.2d 578, 580 (1997).

Plaintiff suggests that section 24 is not a genuine jurisdictional limitation, but rather a substantive

6. While some legislators have characterized the statute as one that provides "immunity," that mistaken description, which appears in a memorandum relating to a bill that was never enacted, cannot properly be attributed to "the state legislature" (see Pet. Br. 19), nor can it displace the authoritative construction of the statute by the State's highest court.

limitation masquerading as a jurisdictional one, like the rule invalidated by this Court in *Howlett*, 496 U.S. at 383 (Br. 28-29, 32). He is mistaken. In *Howlett*, Florida had purported to cloak a school board with sovereign immunity to a section 1983 action, although the board was otherwise subject to suit in state court. This Court invalidated the immunity, explaining that a state could not avoid its obligation to enforce federal law simply by labeling the rule jurisdictional. 496 U.S. at 381-82.[7] "The fact that a rule is denominated jurisdictional does not provide a court an excuse to avoid the obligation to enforce federal law if the rule does not reflect the concerns of power over the person and competence over the subject matter that jurisdictional rules are designed to protect." *Id.* at 381.

New York Correction Law § 24, in contrast, concerns precisely the "competence over the subject matter that jurisdictional rules are designed to protect." *Howlett*, 496 U.S. at 381. It deprives New York courts of the power to hear private damages claims against individual correction employees when the subject matter involves acts or omissions within the employees' scope of employment. The jurisdictional nature of the rule is confirmed by section 24(2), which assigns to the Court of Claims exclusive jurisdiction to entertain a claim for damages based on conduct covered by section 24(1). Thus, the statute removes such claims from the court of general jurisdiction and assigns them to another

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7. Indeed, even Florida's courts did not uniformly view the state-law sovereign immunity defense as "jurisdictional." *See* 496 U.S. at 361 n.5. At least one Florida appellate court had "come to the opposite conclusion." *Id.*

court, where a remedy is available in the form of a damages action against the State. As a result, pursuant to the New York Constitution and a statute enacted under constitutional authority, Supreme Court's ordinary jurisdiction does not include jurisdiction over these individual damages claims. *See Printz v. United States*, 521 U.S. 898, 906 n.1 (1997) ("the States obviously regulate the 'ordinary jurisdiction' of their courts"); *see also Woodward v. State of New York*, 23 A.D.3d 852, 855-56, 805 N.Y.S.2d 670, 673 (N.Y. App. Div. 2005) (holding section 24 a valid jurisdictional statute under the New York Constitution), *appeal dismissed*, 6 N.Y.3d 807, 845 N.E.2d 1276 (2006).

New York enacted section 24 to further its interests in sound judicial and prison administration. The damages actions governed by this statute arise out of events in and around prisons. While such actions apparently include actions by correction employees against other correction employees,[8] it is reasonable to assume that the overwhelming majority are claims by prisoners against correction employees. As this Court has recognized, damages claims by prisoners against correction employees, often brought *pro se*, are numerous and often frivolous. *See Jones v. Bock*, __ U.S. __, 127 S. Ct. 910, 914 (2007). By removing them from Supreme Court, section 24 eliminates the burden they

8. The Court of Appeals was not asked to address this issue in this case. However, in dicta it noted that the statute also governs damages actions by correction employees against supervisory officials, and cited an appellate division decision upholding the constitutionality of section 24 in such a context. J.A. 64 n.6 (citing *Woodward*, 23 A.D.3d at 853, 805 N.Y.S. 2d at 671).

would otherwise impose on the limited resources of New York's busy Supreme Court, a court with an extensive criminal and civil docket. Moreover, the burden on that court would not be imposed evenly throughout the State. Absent section 24, prisoner complaints would be concentrated in the counties where the most populous prisons are located, and perhaps in Albany, where the administrative offices of the Department of Correctional Services are located. They thus would impose an especially high burden on the Supreme Court in those counties. Taking note of these concerns does not in any way denigrate the importance of providing relief to those prisoners with meritorious claims. Rather, it serves to relieve a burden from the Supreme Court generally, and from the courts in particular that otherwise would receive the largest numbers of prisoner complaints and have to sift through them to identify the meritorious ones.[9] The statute channels this litigation instead to the New York court with exclusive jurisdiction to hear, and judges with primary expertise in adjudicating, damages claims against the State arising from the official conduct of state employees. *See* N.Y. Court of Claims Act § 9.

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9. Congress recognized and attempted to deal with the burdens imposed by voluminous and frequently frivolous prisoner litigation in the federal Prison Litigation Reform Act of 1995, 42 U.S.C. §§ 1997e *et seq.* In 1999, New York enacted a similar state statute to deal with the same problem. 1999 N.Y. Laws 412. *See* Governor's Program Bill Memorandum #76, 1999 N.Y. Legis. Ann. 233, 235 ("Increasingly, prisoners in New York are unnecessarily commencing vexatious lawsuits that clog our courts and drain precious judicial resources."). In explaining the need for the statute, the Governor noted that challenges to prison discipline, which unlike damages actions are heard in state Supreme Court, succeed in fewer than 1% of the cases. 1999 N.Y. Legis. Ann. at 234.

In requiring that the action be brought against the State rather than against the individual correction employee, section 24 simply recognizes that, as a result of New York's laws relating to indemnification, the State is the real party in interest with respect to these claims. New York generally indemnifies a correction employee for damages arising from the employee's discharge of official duties within the scope of employment.[10] A damages action against the State is the functional equivalent of a damages action against an employee who is indemnified by the State.

Section 24 also seeks to promote New York's interest in sound prison administration by minimizing the disruptive effect of damages claims by prisoners on the performance by correction employees of their official duties. Contrary to plaintiff's suggestion (Br. 18-20), that purpose is not inconsistent with Congress's purpose in enacting section 1983. Congress sought to provide a remedy for persons, including prisoners, whose constitutional rights were violated by state employees, presumably both to compensate for past harms and to deter future harms. There is no evidence that the congressional purpose is thwarted when states indemnify their employees or otherwise assume the burden of defending such claims. To the contrary, the damages remedy may be most effective in deterring future violations when the burden of defending actions

10. *See* N.Y. Public Officers Law § 17(3)(a) (providing for the State's indemnification of its employees where "the act or omission from which [a] judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties").

and paying damages falls on a state, given a state's ability to prevent future violations by training and disciplining its employees. *See, e.g.,* Newman, *Suing the Lawbreakers: Proposals to Strengthen the Section 1983 Damage Remedy for Law Enforcers' Misconduct*, 87 Yale L.J. 447, 456-57 (1978) ("It would enhance the prospects for deterrence by placing responsibility for the denial of constitutional rights on the entity with the capacity to take vigorous action to avoid recurrence."). Thus, New York's decision to require all such claims to be brought as claims against the State in the Court of Claims is not contrary to the federal policy of providing a remedy and a deterrent for constitutional violations in section 1983.

New York's decision to channel damages actions against correction employees into the Court of Claims serves other important and legitimate state interests as well. The potential for damages actions against individual correction employees could threaten orderly administration of prisons in several respects. The burden of defending such actions and risking damages awards might deter people from accepting employment as correction employees, or inhibit them from taking appropriate action against prisoners. As this Court has recognized, "[i]t is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973). By requiring the claim to be brought directly against the State, the statute reduces the correction employee's involvement in the suit and diminishes a prisoner's ability to harass or inhibit an employee in official duties

through personal damages actions, while preserving a damages remedy for the prisoner who has suffered a cognizable injury.

II. THE SUPREMACY CLAUSE DOES NOT REQUIRE NEW YORK COURTS TO ENTERTAIN DAMAGES CLAIMS AGAINST CORRECTION EMPLOYEES UNDER 42 U.S.C. § 1983 WHEN NEW YORK COURTS LACK JURISDICTION TO HEAR THE SAME TYPE OF CLAIM ARISING UNDER STATE LAW

The Supremacy Clause's "requirement that a state court of competent jurisdiction treat federal law as the law of the land does not necessarily include within it a requirement that the State create a court competent to hear the case in which the federal claim is presented." *Howlett*, 496 U.S. at 372. The general rule is that "'federal law takes the state courts as it finds them.'" *Id.* (quoting Hart, *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 508 (1954)). A state's authority over the jurisdiction of state courts is not unfettered by the federal Constitution, *McKnett v. St. Louis & San Francisco Ry. Co.*, 292 U.S. 230, 233 (1934), and a state cannot avoid its constitutional obligations "by the simple device of removing jurisdiction from courts otherwise competent." *Howlett*, 496 U.S. at 381 (internal quotation marks omitted). But this Court has never held that the Supremacy Clause obligates state courts to entertain section 1983 or other federal claims in all instances. *See National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 587 n.4 (1995) ("We have never held that state courts must entertain § 1983 suits.").

Acting with "utmost caution," *Howlett*, 496 U.S. at 372, to balance the supremacy of federal law against the States' sovereign authority to control the jurisdiction of their own courts, this Court has held that the Supremacy Clause restrains a state from exercising state court jurisdiction in a manner that discriminates against federal claims. Correction Law § 24 respects this carefully delineated constraint.

A. The Supremacy Clause Is Not Offended By State Court Jurisdictional Rules That Do Not Discriminate Against Federal Claims.

This Court has long held that "if exclusive [federal court] jurisdiction be neither express nor implied, the State courts have concurrent jurisdiction whenever, by their own constitution, they are competent to take it." *Claflin v. Houseman*, 93 U.S. 130, 136 (1876); *see Tafflin v. Levitt*, 493 U.S. 455, 458-60 (1990); The Federalist No. 82 (A. Hamilton). Thus, unless Congress confines jurisdiction to the federal courts either explicitly or implicitly, "[t]he federal right is enforceable in a state court whenever its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws." *Missouri ex rel. St. Louis, B. & M. Ry. Co. v. Taylor*, 266 U.S. 200, 208 (1924).

In a series of cases, this Court held that if a state court has adequate jurisdiction under state law and entertains analogous state law claims, it cannot refuse to entertain a federal claim on policy grounds. *See Mondou v. New York, N.H. & H.R.R.* Co., 223 U.S. 1 (1912); *McKnett v. St. Louis & San Francisco Ry. Co.*,

292 U.S. 230 (1934); *Testa v. Katt*, 330 U.S. 386 (1947).[11] In *Mondou*, the state court dismissed a claim under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 *et seq.*, "not because the ordinary jurisdiction of the [state court], as defined by the constitution and laws of the State, was deemed inadequate or not adapted to the adjudication of such a case," 223 U.S. at 55, but because of prudential concerns arising from the court's disagreement with the federal policy and the resulting inconsistency of state law. The state court had reasoned that it would be "inconvenient and confusing" for state courts to have to apply federal law. *Id.* This Court observed that Congress had not purported "to enlarge or regulate the jurisdiction of state courts or to control

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11. This was not always the Court's view. Early constitutional theory embraced the notion of dual sovereignty articulated in *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539 (1842), *Kentucky v. Dennison*, 65 U.S. (24 How.) 66 (1861), and *Collector v. Day*, 78 U.S. (11 Wall.) 113 (1871). Under this doctrine, "the state courts entertained federal actions solely as a discretionary 'matter of comity, which the several sovereignties extended to one another for their mutual benefit. It was not regarded by either party as an obligation imposed by the Constitution.'" *FERC v. Mississippi*, 456 U.S. 742, 763 n.28 (1982) (quoting *Dennison*, 65 U.S. (24 How.) at 109); *see also Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 821 (1824) (Marshall, C.J.) (state courts are "tribunals over which the government of the Union has no adequate control, and which may be closed to any claim asserted under a law of the United States"); *Michell v. Great Works Milling & Mfg. Corp.*, 17 F. Cas. 496, 499 (C.C.D. Me. 1843) (No. 9662) (Story, Circuit Justice) ("The states, in providing their own judicial tribunals, have a right to limit, control, and restrict their judicial functions, and jurisdiction, according to their own mere pleasure.").

or affect their modes of procedure." *Id.* at 56.[12] Rather, the case raised "only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws," to hear the federal claim. *Id.* at 56-57. The state court exercised its jurisdiction in analogous cases arising under its own law and other states' laws. *Id.* at 57. Because "[t]he existence of the jurisdiction creates an implication of duty to exercise it," the state court could not as a matter of discretion refuse to hear the federal claim. *Id.* at 58-59.

In *McKnett*, this Court reaffirmed that "[a] state may not discriminate against rights arising under federal laws." 292 U.S. at 234. In that case, a state court read its statutory authority as excluding power to hear a FELA claim against a foreign corporation for an injury suffered in another state, because it expressly granted jurisdiction only over claims arising under the common law or statute of the other state. *Id.* at 231-32. While "Congress ha[d] not attempted to compel states to provide courts for the enforcement" of the federal claim, the state court had jurisdiction in an analogous "class of actions . . . in cases between litigants situated like those in the case at bar." *Id.* at 232-33. Under these circumstances, the Constitution prohibited the state court from refusing to hear the claim "solely because the suit is brought under a federal law." *Id.* at 233-34.

This nondiscrimination principle was applied again in *Testa v. Katt*. There the state court declined to

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12. This, the Court observed in *Howlett*, was "a matter of some significance." 496 U.S. at 373.

entertain a claim for treble damages under the federal Emergency Price Control Act, 50 U.S.C. § 925 (terminated 1947), because of a state policy against enforcement of federal or other states' statutes deemed to be "penal." 330 U.S. at 388, 392. The "same type of claim arising under [state] law would be enforced" by the state court, and thus the state court had "jurisdiction adequate and appropriate under established local law to adjudicate [the] action." *Id.* at 394. Citing *Mondou* and *McKnett*, this Court held that where the state court had adequate jurisdiction under state law, it could not "'refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers.'" *Id.* at 393 (quoting *Minneapolis & St. L.R. Co. v. Bombolis*, 241 U.S. 211, 222 (1916)).

The holding in *Testa*, however, was limited to an instance in which adequate jurisdiction already existed under state law to entertain the federal claim. "[N]othing in *Testa* upset[] 'the traditional doctrine that Congress may not interfere with a state's sovereign right to determine and control the jurisdictional requirements of its own courts.'" *FERC v. Mississippi*, 456 U.S. 742, 773 n.4 (1982) (Powell, J., concurring in part and dissenting in part) (quoting Note, *Utilization of State Courts to Enforce Federal Penal and Criminal Statutes: Development in Judicial Federalism*, 60 Harv. L. Rev. 966, 971 (1947)). To the contrary, this Court confirmed in a series of cases involving claims under FELA that state courts may dismiss a federal claim pursuant to state jurisdictional limitations that apply evenhandedly to state and federal claims. *See Douglas v. New York, N.H. & H.R.R. Co.*, 279 U.S. 377 (1929); *Herb v. Pitcairn*,

324 U.S. 117 (1945); *Missouri ex rel. Southern Ry. Co. v. Mayfield*, 340 U.S. 1 (1950).

In *Douglas*, this Court upheld a state court's dismissal of a FELA claim pursuant to a New York statute permitting courts to dismiss either state or federal claims, in the court's discretion, when neither party to the claim resided in the State. Because the State had "manifest reasons for preferring residents in access to often overcrowded Courts," the Court held the application of the nondiscriminatory statute to be a "valid excuse" not to entertain the federal claim. 279 U.S. at 387-88.

Likewise, in *Herb*, the Court upheld a city court's dismissal of a FELA claim under a state statute that denied the court jurisdiction over a cause of action arising outside the court's territorial limits. This Court reiterated that "[t]he freedom of the state courts so to decide is, of course, subject to the qualification that the cause of action must not be discriminated against because it is a federal one." 324 U.S. at 123. Finding nothing to suggest that if the "cases had been brought under state statutes or common law they would not have been dismissed under the same circumstances," this Court upheld the state court's refusal where the state court had not "construed the state jurisdiction and venue laws in a discriminatory fashion." *Id.*

Finally, in *Mayfield*, this Court upheld the power of a state to refuse adjudication of a FELA claim under the state court's conception of *forum non conveniens.* The Court reaffirmed "the power of a State to deny access to its courts to persons seeking recovery under

[a federal statute] if in similar cases the State for reasons of local policy denies resort to its courts and enforces its policy impartially so as not to involve a discrimination against [federal] suits." 340 U.S. at 4 (citation omitted).

These decisions establish the principles governing a state court's authority or duty to hear federal claims. Under *Claflin* and its progeny, where federal court jurisdiction is not made exclusive, a state court is presumptively authorized to hear federal claims when it has adequate jurisdiction under the state's constitution and laws. Under *Mondou*, *McKnett* and *Testa*, a state court cannot discriminate against federal claims when its jurisdiction, as defined by state law, is adequate to adjudicate analogous state law claims. *See also Martinez v. California,* 444 U.S. 277, 283 n.7 (1980) ("where the same type of claim, if arising under state law, would be enforced in the state courts, the state courts are generally not free to refuse enforcement of the federal claim"). However, under *Douglas*, *Herb* and *Mayfield*, the Supremacy Clause does not override a state court jurisdictional limitation that does not discriminate against federal claims; in that case, the limitation provides a valid excuse for not entertaining a federal claim.[13] These principles strike a careful balance between the supremacy of federal law and the States'

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13. *See* Tribe, *American Constitutional Law*, at 1275 (3d ed. 2000) (suggesting that this Court "would find that state court systems are under no obligation to include a tribunal with the jurisdiction necessary to entertain claims against governmental entities, so long as the jurisdictional limitation is expressed in a way that does not discriminate against *federal* claims in particular.") (emphasis in the original).

retained sovereign autonomy to structure the jurisdiction of their own courts.

Plaintiff relies heavily on this Court's decisions in *Martinez*, *Felder v. Casey*, 487 U.S. 131 (1988), and *Howlett*, but those cases have no application here. The state laws at issue in *Martinez* and *Felder* did not involve the fundamental authority of a state to establish the structure and jurisdiction of state courts, and therefore did not invoke the extreme deference due to that authority. And the state law in *Howlett*, which was arguably also not jurisdictional in nature, was in any event invalid because it applied restrictions to the federal cause of action that did not apply to similar state causes of action.

In *Martinez*, this Court stated that a state could not accept jurisdiction of a section 1983 claim against parole officials and then eviscerate it with a blanket immunity defense. 444 U.S. at 284-85. The Court specifically noted that the California courts had accepted jurisdiction of the federal claim, *id.* at 284 n.7, and consequently the state statute was not properly analyzed as an exercise of the state's authority to define the jurisdiction of its courts. (The Court ultimately reserved the question what immunity, if any, a parole official might have in a section 1983 action, because it found no constitutional violation in the allegation that parole officials had improperly released a prisoner who later murdered the plaintiffs' decedent. *Id.* at 284-85.)

Likewise in *Felder*, this Court held that a state could not accept jurisdiction of a section 1983 claim against

police officers and then undermine it with a notice-of-claim rule that effectively imposed a very short statute of limitations and an onerous exhaustion requirement. 487 U.S. at 151-52; *see also Howlett*, 496 U.S. at 377 (characterizing *Felder*'s notice-of-claim rule). Here too, the Wisconsin courts had clearly accepted jurisdiction of the claim, and thus the state statute was not an exercise of the state's authority to define the jurisdiction of its courts.

Finally in *Howlett*, this Court held that a state could not undermine a section 1983 action against a school board with a defense of sovereign immunity. 496 U.S. at 375-80. The parties in that case disagreed over whether the Florida statute was substantive or jurisdictional. *Id.* at 375. This Court declined to resolve the dispute, *id.*, but pointed out that calling a rule jurisdictional would not suffice unless the rule reflected genuine concerns of power over the person and competence over the subject matter. *Id.* at 381. Moreover, because the statute in *Howlett* discriminated against the federal cause of action, conferring sovereign immunity in a section 1983 action, but not in an analogous state law action, it would be invalidated even if it were regarded as jurisdictional in nature. *Id.* at 378-80.

Thus, none of these cases involved a statute, like section 24, that regulates a state court's jurisdiction over a category of claims in a manner that does not discriminate against federal claims.

B. Correction Law § 24 Constitutionally Regulates The Jurisdiction Of New York State Courts In A Manner That Does Not Discriminate Against 42 U.S.C. § 1983 Or Other Federal Claims.

Applying these principles, Correction Law § 24 passes muster under the Supremacy Clause. Under section 24, New York Supreme Court lacks "jurisdiction adequate and appropriate under established local law," *Testa*, 330 U.S. at 394, to hear plaintiff's section 1983 damages claims. The analogous claims arising under state statutory or common law will also not be entertained in New York courts. In an evenhanded fashion, the statute bars *all* private damages claims against correction employees in their personal capacities, whether arising under state or federal law, for acts or omissions in the scope of their employment. It treats litigants under section 1983 the same as similarly situated litigants seeking damages under state law and does not discriminate against section 1983 claims "solely because the suit is brought under a federal law." *McKnett*, 292 U.S. at 233-34. Thus, New York "denies resort to its courts and enforces its policy impartially, so as not to involve a discrimination against [federal] suits," *Mayfield*, 340 U.S. at 4 (citation omitted), and the Supremacy Clause is not violated.

Plaintiff acknowledges that section 24 applies equally to state and federal claims against individual correction employees (Br. 40), but nevertheless argues (Br. 36) that the provision discriminates because, like the notice-of-claim statute in *Felder*, it is imposed on a specific class of plaintiffs — here, those that seek relief

from certain governmental defendants — and thus has a similar "defendant-specific focus." 487 U.S. at 145. In his decision for the Court in *Felder*, Justice Brennan noted that these facts distinguished the notice-of-claim statute from other state procedural rules generally applicable to all parties and made it discriminatory in nature. *Id.*

But the theory of discrimination articulated in *Felder* has not been applied in subsequent cases, *see* Tribe, *American Constitutional Law*, at 1277 n.40 (3d ed. 2000), and should not be applied here. First, as Justice O'Connor pointed out in dissent, because the Wisconsin statute did not treat federal claims differently from state claims, it was not "discriminatory" in the usual sense of that word. Justice O'Connor commented that "the Wisconsin statute 'discriminates' only against a right that Congress has never created: the right of a plaintiff to have the benefit of selected federal court procedures" while proceeding in the state forum with whatever advantages it may provide. *Felder*, 487 U.S. at 161 (O'Connor, J., dissenting).[14]

In any event, this "new theory of discrimination," *id.* at 160 (O'Connor, J., dissenting), was not necessary to the decision in *Felder*. The rule at issue in *Felder* did not define the jurisdiction of a state court, but simply provided a certain class of defendants with a waivable

14. It is not clear whether plaintiff sought to avail himself of any particular procedural advantages by filing his complaint in state court. Given the references in his complaints to *Howlett* and *Felder*, it seems more likely that he filed his complaints in state court expressly to challenge the constitutionality of section 24.

affirmative defense. Thus, the burden it imposed on section 1983 litigants was preempted under basic conflict preemption principles, without regard to any possible discrimination. *See id.* at 153-56 (White, J., concurring) (notice-of-claim rule stood as an obstacle to objectives of section 1983 articulated in *Wilson v. Garcia*, 471 U.S. 261 (1985)); *see also Howlett*, 496 U.S. at 377 (explaining *Felder*'s holding that a state cannot interfere with or frustrate a section 1983 claim over which it has jurisdiction).

Felder's expansive view of discrimination has no application to state court jurisdictional rules, where neutrality between state and federal claims has long been sufficient to vindicate Supremacy Clause concerns.

Finally, while a jurisdictional barrier, like an immunity defense, defeats a plaintiff's claim, this Court has clearly held that there is an important distinction between them for purposes of the Supremacy Clause. A state may enforce a jurisdictional barrier established for good cause if it does not discriminate between state and federal claims, but it may not enforce an immunity defense that defeats a federal claim over which the state courts have accepted jurisdiction. That distinction respects the sovereign authority of the State to define the jurisdiction of its various courts, and leaves no room for application of the principle, invoked by plaintiff (Br. 24) citing *Chamber of Commerce v. Brown*, __ U.S.__, 128 S. Ct. 2408 (2008), that the State should not be permitted to accomplish indirectly what it cannot do directly.

C. Correction Law § 24 Manifests No State Hostility To The Enforcement Of Federal Rights

To the extent *Felder*'s expansive theory of discrimination reflects a concern about state statutes that manifest hostility to federal rights, that concern has no application here.

Section 24 does not, as plaintiff asserts (Br. 17-21), demonstrate hostility to federal rights. The legislative decision to remove damages claims against correction employees from the court of general jurisdiction and to assign them, as claims against the State, to a specialized Court of Claims reflects hostility neither to this category of claims, nor to the subset of claims brought under federal law. To the contrary, it reflects a concern about orderly administration of justice in courts that would otherwise be inundated with such claims, and a concern about resolving them fairly and expeditiously.

To be sure, the result of section 24's assignment of cases to the Court of Claims is that no state forum exists for a section 1983 action for damages for conduct arising out of the actions of correction employees in the scope of their employment. But this results not from a state determination to exclude section 1983 damages actions, but from the limitations inherent in section 1983 itself. It is Congress, not New York, that decided not to authorize such actions because it did not make states "persons" who can be sued under section 1983. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989); *cf. Alden*, 527 U.S. at 758 (finding "no evidence that the

State [had] manipulated its immunity in a systematic fashion to discriminate against federal causes of action").

Contrary to plaintiff's assertion (Br. 16, 20-21), nothing in section 24 limits the claims maintainable against the State in the Court of Claims to state law claims. Indeed, while the Court of Appeals has not often addressed the issue, it has indicated that some federal statutory claims may be maintained against the State there. *See*, *e.g.*, *Alston v. State of New York*, 97 N.Y.2d 159, 762 N.E.2d 923 (2001) (claim under federal Fair Labor Standards Act); *Manners v. State of New York*, 285 A.D.2d 858, 727 N.Y.S.2d 547 (N.Y. App. Div.) (same), *appeal dismissed*, 97 N.Y.2d 637, 760 N.E.2d 1289 (2001).[15] It also has recognized that the Court of Claims has jurisdiction to entertain constitutional tort claims for violations of the New York Constitution, *see Brown v. State of New York*, 89 N.Y.2d 172, 674 N.E.2d 1129 (1996), the provisions of which generally provide protections at least as broad as their federal counterparts. *See id.* at 190.[16] And nothing in *Brown*

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15. Contrary to plaintiff's suggestion (Br. 21-22 nn.3-4), this case does not present the issue, nor did the Court of Appeals address, whether the limitations in New York's Court of Claims could be applied to federal claims brought under federal statutes that, unlike section 1983, abrogate the States' immunity from suit. Plaintiff also suggests that Correction Law § 24 could be read to apply to a suit against the State under certain federal statutes. That is incorrect. By its plain terms, section 24 applies only to damages claims against correction employees in their personal capacities. It cannot be read to implicate claims against the State.

16. In *Brown*, constitutional tort damages claims against the State were implied for violations of the Equal Protection (Cont'd)

precludes application of a similar analysis to federal constitutional claims.

Nor is hostility to section 1983 actions shown by the fact that litigants who choose to bring their damages claims against correction employees in state court do not obtain in the Court of Claims all the features of a section 1983 claim, such as injunctive relief, punitive damages, attorneys' fees and a jury trial. Contrary to plaintiff's suggestion (Br. 21), these features remain available in many circumstances; section 24 diverts from Supreme Court to the Court of Claims only actions for damages arising from conduct within the scope of employment. Actions for injunctive relief, and actions for damages arising out of conduct beyond the scope of employment, may be brought against individual correction employees in Supreme Court, where punitive damages, attorneys' fees, and jury trials are all available. And these reservations of jurisdiction in Supreme Court are significant.

Actions for injunctive relief have long been recognized as among the most important mechanisms for enforcing federal constitutional rights. This Court has stressed the supreme federal interest in enjoining

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(Cont'd)

and Search and Seizure Clauses of the New York Constitution. 89 N.Y.2d at 188, 674 N.E.2d at 1139; s*ee also Davis v. State of New York*, 5 Misc.3d 1011A, 798 N.Y.S.2d 708 (N.Y. Ct. Cl. 2004) (claim by prisoner under Cruel and Unusual Punishments Clause of state Constitution); *Student Lifeline, Inc. v. State of New York*, 16 Misc.3d 1132A, 847 N.Y.S.2d 905 (N.Y. Ct. Cl. 2007) (claim under Due Process Clause of state Constitution).

ongoing violations of federal law, noting that "[r]emedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law," whereas "compensatory or deterrence interests are insufficient to overcome the dictates of the Eleventh Amendment." *Green v. Mansour*, 474 U.S. 64, 68 (1985); *see also Alden*, 527 U.S. at 757 ("Established rules provide ample means to correct ongoing violations of law and to vindicate the interests which animate the Supremacy Clause.").

At the same time, actions for injunctive relief have enormous potential to intrude on state processes and to impose substantial costs on the State. If New York were hostile to the assertion of rights under section 1983, it could have removed injunctive actions as well as damages actions from the jurisdiction of the Supreme Court, but it did not. Indeed, the availability of attorneys' fees is most important as an inducement to lawyers in injunctive actions, because they can produce no monetary fund from which counsel can be paid. *See Pulliam v. Allen*, 466 U.S. 522, 527 n.4 (1984); *see also* S. Rep. No. 94-1011 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5908, 5910 (42 U.S.C. § 1988 modeled in part on fee provision in Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000a-3(b), which authorizes only injunctive relief, and thus where need for attorneys' fees most clear).

Section 24 also reserves jurisdiction in New York Supreme Court over damages actions against correction employees in their personal capacities for acts that are outside the scope of employment. For such egregious conduct, New York provides neither indemnification,

see N.Y. Public Officers Law § 17, nor diversion of the resulting claims to its Court of Claims. These are the cases in which punitive damages are most likely to be appropriate, and Supreme Court retains jurisdiction over them. *See Waxter v. State of New York*, 33 A.D.3d 1180, 826 N.Y.S.2d 753 (N.Y. App. Div. 2006) (section 24 did not preclude action by inmate against correction employee personally in Supreme Court for alleged sexual assault).

It is true, as plaintiff notes (Br. 11), that damages claims that proceed in the New York Court of Claims are tried to the bench, and not to a jury. Plaintiff cites no support for his contention (Br. 25) that assigning decision-making to judges lessens the likelihood of compensation for meritorious claims. Moreover, nothing in section 1983 assures a right to a jury. Section 1983 litigants derive their right to a jury in federal court from the Seventh Amendment. That amendment has not been made applicable to the States through the Fourteenth Amendment. *See Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 418 (1996); *see also Malloy v. Hogan*, 378 U.S. 1, 4 & n.2 (1964) (enumerating amendments not found applicable to states). While New York provides a jury right under the state Constitution, N.Y. Const. art. I, § 2, no federal right would be violated if it did not. Similarly, the lack of a jury in an action for damages in the Court of Claims provides no evidence of hostility to federal rights.

Finally, the fact that New York courts have jurisdiction to hear section 1983 damages actions against other categories of state employees only confirms that section 24 does not remove section 1983 suits for

damages against correction employees from Supreme Court because of their federal source. Rather, it demonstrates that section 24 responds to the special concerns that damages actions against correction employees engender, whether brought pursuant to state or federal law. This Court has "never held that a rule must be monolithic to be neutral." *Johnson*, 520 U.S. at 918 n.9. The neutrality required by the Supremacy Clause in this context is neutrality between state and federal claims, not neutrality between categories of state defendants.[17] Thus, Correction Law § 24's limitation to correction employees, applicable to state and federal claims alike, does not effect a discrimination within the purview of the Supremacy Clause.

III. CONGRESS DID NOT CLEARLY STATE AN INTENTION IN 42 U.S.C. § 1983 TO OVERRIDE STATE COURT JURISDICTIONAL RULES THAT DO NOT DISCRIMINATE AGAINST FEDERAL CLAIMS

Congress did not purport in section 1983 to override the States' historic sovereign authority to structure the jurisdiction of their own courts. The history of that statute's enactment belies any such intent, and this Court should not presume otherwise.

This Court has often repeated the general rule of statutory construction that if Congress intends to alter

17. Plaintiff does not challenge section 24's limitation to claims against correction employees on equal protection grounds and should not be able to evade the standard of review that would apply to such a claim by reframing such "discrimination" as a Supremacy Clause violation.

the "usual constitutional balance between the States and the Federal Government," it must make its intention to do so "unmistakably clear in the language of the statute." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985). The rule applies if congressional action would "affect[] the federal balance in an area that has been a historic power of the States, whether or not it constitutes an abrogation of state sovereign immunity." *Raygor v. Regents of the Univ. of Minnesota*, 534 U.S. 533, 544 (2002); *see also Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (when Congress intends to preempt the historic powers of the States, it should make its intention "clear and manifest"). *Atascadero* involved the Eleventh Amendment, but the Court applies the same approach in other contexts as well. *See, e.g., Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Will v. Michigan Dep't of State Police*, 491 U.S. 58 (1989).

Gregory v. Ashcroft implicated the power of Missouri to establish the qualifications of its own judges, a power reserved to the States by the Tenth Amendment, and one the Court recognized as so fundamental it "'should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.'" 501 U.S. at 460 (quoting *Taylor v. Beckham*, 178 U.S. 548, 570-71 (1900)). The Court explained that congressional interference with this power would upset the usual constitutional balance of federal and state powers. Thus, it was "'incumbent upon the federal courts to be certain of Congress' intent before finding that federal law overrides' this balance." 501 U.S. at 460 (quoting *Atascadero*, 473 U.S. at 243). No such intent could be found in the statute at issue, the Age Discrimination in

Employment Act, 29 U.S.C. § 621 *et seq.*, and thus the Court declined to find that the statute's protections extended to Missouri's judges.

Will examined the coverage of section 1983 in a context that implicated the states' historic sovereign immunity from suit in state courts. Section 1983 applies only to "persons," and the Court found that Congress's use of this term did not by itself provide a sufficiently clear statement that Congress intended the statute to subject the States to suit in state courts. 491 U.S. at 65.

The Court's decision in *Will* is particularly instructive, because the Court went on to examine the history of section 1983's enactment and found that it reinforced the view that Congress did not intend section 1983 to subject states to suit in state court. Congress had enacted the precursor to section 1983 "'in response to the widespread deprivations of civil rights in the Southern States and the inability or unwillingness of authorities in those States to protect those rights or punish wrongdoers.'" *Will*, 491 U.S. at 66 (quoting *Felder*, 487 U.S. at 147). Although Congress did not establish federal courts as the exclusive forum to remedy these deprivations, "it is plain that 'Congress assigned to the federal courts a paramount role' in this endeavor." *Id.* (quoting *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503 (1982)). *Patsy* had explained that the "very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights" and to provide "immediate access to the federal courts notwithstanding any provision of state law to the contrary." *Patsy*, 457 U.S. at 503-04 (internal quotation marks omitted).

It thus appeared highly unlikely that Congress nevertheless intended to create a cause of action against the States enforceable in state courts, which were "precisely the courts Congress sought to allow civil rights claimants to avoid through § 1983." *Will*, 491 U.S. at 66.

The power of the States to structure and regulate the jurisdiction of their own courts is an essential attribute of sovereignty that is reserved to the States by the Tenth Amendment. It is at least as essential to the independence of the States as their power to prescribe the qualifications of their judicial officers. *See Gregory*, 501 U.S. at 460 ("Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign."). As in other traditionally sensitive areas affecting the federal balance, a clear statement rule would assure "'that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.'" *Will*, 491 U.S. at 65 (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)); *see also* Sandalow, *Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 Sup. Ct. Rev. 187, 207 ("In the absence of a declaration by Congress that state courts must enforce rights that Congress has created, there appears to be no substantial reason why the Supreme Court should impose such an obligation.").

Section 1983 contains no such clear statement. Neither section 1983 nor its jurisdictional counterpart, 28 U.S.C. § 1343(a)(3), contain any indication that Congress intended the enactment of those provisions to intrude on the historic power of the States to

structure the jurisdiction of their courts.[18] *See Douglas*, 279 U.S. at 387 (federal statute did "not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned"*); see also Mondou*, 223 U.S. at 56 (same). Because the jurisdiction of federal courts over section 1983 claims is not exclusive, state courts are presumptively authorized to exercise concurrent jurisdiction over section 1983 claims to the extent that jurisdiction exists under state law. *Claflin*, 93 U.S. at 136. However, Congress did not purport to obligate state courts to entertain section 1983 claims in disregard of state court jurisdictional rules like Correction Law § 24 that apply evenhandedly to state and federal claims. Nor did Congress except section 1983 claims from the general rule permitting defendants to remove to federal court actions asserting federal claims against them. *See* 28 U.S.C. § 1441.[19] Section 24 does not, then, "countermand Congress' judgment" (Br. 17), as plaintiff asserts.

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18. Had the 42d Congress considered the issue of obligating state courts to hear section 1983 claims, it likely would have viewed itself as lacking that authority. As noted above, *supra* n.11, the prevailing view at that time was that state courts would entertain federal actions solely as a discretionary matter of comity and were not obligated to do so. *See FERC*, 456 U.S. at 763 n.28.

19. In contrast, the Federal Employers' Liability Act construed in *Mondou* and *McKnett* prohibited removal to federal court of such suits brought in a state court of competent jurisdiction. *See Mondou*, 223 U.S. at 56; 28 U.S.C. § 1445 (prohibiting removal of FELA and various other federal actions).

To the contrary, the historical context of section 1983 that this Court reviewed in *Will* confirms that Congress was not concerned with mandating state court jurisdiction over section 1983 claims at all. As *Will* explained, Congress's purpose was to provide a federal forum, and thereby permit litigants to avoid state courts. Congress thus could not have been concerned with the manner in which states regulated the jurisdiction of their own courts. There is no evidence that Congress intended to intrude on this historic sovereign authority.

The clear statement rule is "an acknowledgment that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere." *Gregory*, 501 U.S. at 461. Section 1983 does not clearly state an intent to intrude on the States' reserved power to structure the jurisdiction of their own courts. This Court should not presume that Congress intended to interfere with New York's core sovereign authority over the jurisdiction of New York courts. Correction Law § 24 should be upheld.

CONCLUSION

The judgment of the New York Court of Appeals should be affirmed.

Respectfully submitted,

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